

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 98-4080

COLIN MASSIAS, a/k/a Jamaican C,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of North Carolina, at Charlotte.
Thomas A. Wiseman, Jr., Senior District Judge,
sitting by designation.
(CR-94-148-V)

Submitted: March 16, 1999

Decided: March 30, 1999

Before WILLIAMS, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Terry F. Rose, Charlotte, North Carolina, for Appellant. Mark T. Cal-
loway, United States Attorney, Frank D. Whitney, Assistant United
States Attorney, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Colin Massias appeals his conviction and sentence after a conviction for conspiracy to possess with intent to distribute and to distribute cocaine, in violation of 21 U.S.C. § 846 (1994). We affirm.

The Government's evidence showed that Massias was involved in a conspiracy that bought powder cocaine and cooked it into crack cocaine for distribution. Massias often supervised the cooking of the cocaine into crack and also served as security for the conspiracy. The court originally sentenced Massias to 160 months' imprisonment based only on distribution of powder cocaine. Upon the Government's appeal, this Court vacated Massias' sentence, and remanded for resentencing with instructions for the sentencing court to consider the substantial evidence that Massias trafficked in crack. See United States v. Massias, No. 96-4577 (4th Cir. May 30, 1997) (unpublished). After considering this evidence, the court resentedenced Massias to 324 months' imprisonment. Massias timely appealed.

Massias contends that he received ineffective assistance of counsel in numerous ways. Because the record does not conclusively show ineffective assistance of counsel, we decline to consider this issue on direct appeal. See United States v. Smith, 62 F.3d 641, 650-51 (4th Cir. 1995). Further, the evidence was more than sufficient to support the district court's finding that a conspiracy existed, of which Massias was a part, and that the co-conspirators' statements admitted at trial were made in the course of and in furtherance of the conspiracy; therefore, the district court did not abuse its discretion in admitting these statements. See Fed. R. Evid. 801(d)(2)(E); United States v. Neal, 78 F.3d 901, 904-05 (4th Cir. 1996).

We therefore affirm Massias' conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately set forth in the materials before the court and argument would not aid the decisional process.

AFFIRMED